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385; MAY, INSURANCE, Ed. 4, Chap. VII, 8 MICH. L. REV. 664. Late cases upholding the doctrine of the principal case are *Athens Mut. Ins. Co. v. O'Keefe* (Ga. 1910), 66 S. E. 1093; *London Guaranty Co. v. Miss. Central Ry.* (Miss.), 52 South. 787; *Hulen v. Ins. Co.*, 80 Kan. 127, 102 Pac. 52; *Miller v. Prussian Ins. Co.*, 158 Mich. 402, 122 N. W. 1093; *Staats v. Pioneer Ins. Ass'n.*, (Wash.), 104 Pac. 185; *Wisotzky v. Niagara Ins. Co.*, 189 N. Y. 532, 82 N. E. 1134. Contra: *Crook v. N. Y. Life Ins. Co.*, 112 Md. 268; *McElroy v. Metropolitan Life*, 84 Neb. 866, 122 N. W. 27; *Athens Mutual Ins. Co. v. Evans*, 132 Ga. 703, 64 S. E. 993; *Sullivan v. Mercantile Mut. Co.*, 20 Okl. 460, 94 Pac. 676; *Russell v. Prudential Ins. Co.*, 176 N. Y. 178; *Kyte v. Corn. Ass'n. Co.*, 144 Mass. 43, 10 N. E. 518; *Parker v. Rochester Ger. Ins. Co.*, 16 Mass. 410, 39 N. E. 179.

HUSBAND AND WIFE—RIGHT OF WIFE TO SUE FOR ALIENATION OF HUSBAND'S AFFECTIONS.—Plaintiff and defendant were married women living apart from their husbands, undivorced. Plaintiff sued defendant for alienation of her husband's affections, predicated her right to sue upon two different statutes, one permitting a married woman living apart from her husband to sue and be sued alone in tort actions, the other allowing a married woman to prosecute and defend suits for the preservation or protection of her property as if unmarried. Demurrer. (1) No remedy at common law or by statute. (2) Non-joinder of husbands. *Held*, (1) that at common law a married woman had a *right of action* for this tort, but that inability to sue without joinder of her husband (who was not permitted thus to profit by his own wrong) barred her remedy; and that under either statute plaintiff could recover; (2) that the husbands need not be joined. *Eliason v. Draper* (1910), — Del. —, 77 Atl. 572.

Only three jurisdictions now hold that the wife has no remedy for this wrong. *Doe v. Roe*, 82 Me. 503, 20 Atl. 83, 8 L. R. A. 833, 17 Am. St. Rep. 499; *Lonstorf v. Lonstorf*, 118 Wis. 159, 95 N. W. 961; *Lellis v. Lambert*, 24 Ont. App. 653. New Jersey recently repudiated the doctrine. *Sims v. Sims* (1910), — N. J. L. —, 76 Atl. 1063. And in Wisconsin it has been held that if two or more effect the alienation the wife may recover substantially the same damages from them in a common law action for conspiracy. *Randall v. Lonstorf*, 126 Wis. 147; *White v. White*, 132 Wis. 121. Most courts now hold that the *right* existed at common law, (though there seems to have been no direct holding to that effect in the common law courts. *Lynch v. Knight*, 9 H. L. Cas. 577) and that the wife now may sue, either by virtue of judicial decision, *Foot v. Card*, 58 Conn. 1, 18 Atl. 1027, 6 L. R. A. 829, 18 Am. St. Rep. 258, or under a statute giving a married woman remedy for torts against her, *Sims v. Sims*, *supra*; or to preserve her property rights, *Bennett v. Bennett*, 116 N. Y. 584, 58 N. E. 249, 52 L. R. A. 630, and cases cited; or removing her disabilities more generally, *Nolin v. Pearson*, 191 Mass. 283, 77 N. E. 890, 4 L. R. A. (N. S.) 643 and note; *Keen v. Keen*, 49 Ore. 362, 90 Pac. 147, 10 L. R. A. (N. S.) 504. And the right to maintain the action has been sustained under such a statute, though the sum recovered might become community property. *Humphrey v. Pope*, 122 Cal. 253, 54

Pac. 847. Apparently it is only a matter of time before the right of the wife to recover for the enticing away of her husband will be acknowledged as universally as his right under like facts now is.

JUDGMENTS ON THE MERITS, WHAT CONSTITUTES—FORM—NONSUIT.—At the trial of a cause the plaintiff introduced his evidence and rested, whereupon the defendant made a motion, challenging the legal sufficiency of the evidence and requiring the court to discharge the jury and decide as a matter of law what verdict should be found. The court granted the motion and "adjudged that plaintiff take nothing herein and defendants recover their costs, etc." A Statute of Washington permitted the court to discharge the jury in such cases. *Held*, two judges dissenting, this was a judgment on the merits. *McKim v. Porter et al.* (1910), — Wash. —, 110 Pac. 1073.

The two dissenting judges considered this a judgment of nonsuit and no bar. The distinction between a judgment on the merits and a nonsuit is well defined, and the difference in their effect the one as *res adjudicata* and the other as no bar, it is too well settled to require citation of authority. "Merits" is not employed here in the moral sense. *Tracey et al. v. Shumate et al.*, 22 W. Va. 474. A judgment on the merits is based on the real and substantial rights and issues. FREEMAN, JUDGE, § 360; *Buck v. Collins*, 69 Me. 445; and it is not on the merits when the suit is dismissed for want of jurisdiction, defect of pleadings, or parties, or a misconception of his cause of action, or suit prematurely brought. *Hughes v. United States*, 4 Wall. 232. The court in the principal case distinguishes "legal sufficiency of the evidence," as provided by the statute under which the motion was made, from *probative* sufficiency of the evidence, and holds that under the former the judgment is on the merits, while if it is the probative sufficiency that is attacked, the judgment is a non-suit. The evidence affirmatively showed defendant entitled to judgment, therefore a verdict based thereon was on the merits. *Morgan v. Chi., M. & St. P. R. R. Co.*, 83 Wis. 348; *McGuire v. Bryant L. & S. Mill Co.*, 53 Wash. 425. If, from the words used it can be determined what the judgment was, the use of informal or inartificial language will not render a judgment on the merits bad, *Minkhart v. Hankler*, 19 Ill. 47; *Buckfield v. Gorham*, 6 Mass. 445.

LANDLORD AND TENANT—COLLAPSE OF BUILDING—LIABILITY OF TENANT.—Defendant, tenant of a building, used the same as a slate mantel factory. Building had been condemned, before defendant's occupation, and repaired by the owner. The structure collapsed, killing plaintiff's husband, who had been in the employ of defendant. Suit is brought against the tenant for overloading the floors. *Held*, the tenant may show that the owner of the building was negligent in constructing and repairing the walls and that the owner had notice of the unsafe condition of the building. *Thorp v. Boudwin* (1910), — Pa. —, 77 Atl. 421.

Similar to the principal case was *McKenna v. Nixon Paper Co.*, 176 Pa. 306, 35 Atl. 131. Here a building used by defendants as a paper warehouse collapsed. It was held that the mere fact of collapse is not proof that defendant overloaded the building, lessee having no notice of the defect;